

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1225 OF 2002

Vishwas Namdev Fase ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mrs.P.P. Shinde for Appellant
Mr.D.R. More, APP, for Respondents

CORAM: V.G. PALSHIKAR, Ag. C.J. &
SMT.NISHITA MHATRE, J.

DATED: SEPTEMBER 11, 2006

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appeal challenges the conviction and sentence imposed by the IV Additional Sessions Judge, Kolhapur against the appellant under sections 302 and 324 of the Indian Penal Code. The Appellant has been convicted and sentenced to life imprisonment for having murdered one Mujib Ayub Patharwat. He has also been convicted of the offence punishable under section 324 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and payment of fine for assaulting three persons who are prosecution witnesses in this case.

2. The complainant's sisters Vandana and Nandana had to often endure the appellant's eve teasing. They had to face the wolf whistles and obscene gestures of the Appellant. On 9.7.1999, Vinayak, PW1 had

accompanied his sister Vandana for securing admission to college. When he returned home, he learnt from his parents that the small child of the brother of the appellant had gone under a handcart. The mother of the appellant who was known to the family of Vinayak requested Nandana who was at home to bring the child out to safety. The appellant came to the spot pulled Nandana's hair and beat her due to which she fell to the ground. The complainant's parents requested the parents of the appellant to restrain his behaviour towards their daughters. The complainant learnt of this incident from his parents. In the evening, when the complainant met his friends as usual near the Ganapati temple, he narrated the incident of the afternoon to them. The complainant and his friends decided to warn the appellant to refrain from such indecent behaviour. They tried contacting him at home at about 7.15 pm. The complainant did not find the appellant at home at that point of time and therefore, returned to the Ganapati temple. He tried to meet the appellant twice thereafter at about 8.45 pm and 11.30 pm. On both the occasions, the complainant was unsuccessful. He returned to the Ganapati temple after 11.30 and told his friends about the same. All of them then proceeded towards the house of the appellant. Just after midnight, the complainant and his friends including Mujib, Bajrang PW2 and Ravindra, PW3 knocked on the door of the appellant and called out to him. Within minutes, the appellant came

out from his house after switching on the light. The complainant questioned the appellant's behaviour towards his teenaged sisters. While the complainant was talking, the appellant whisked out a knife which he held behind his back and stabbed Mujib in the stomach. Mujib collapsed to the ground. The complainant and Ravindra tried to snatch the knife from the appellant, shouting at the same time to the appellant to drop it. However, the appellant struck the complainant on the forehead with a knife. The appellant gave another blow with the knife to the complainant on his head near the right ear. Ravindra made an attempt to snatch the knife out of the appellant's hand. However, he was also struck with the knife. Bajrang who had accompanied them, was struck on the back by the appellant with the knife when he bent over to ascertain Mujib's well being. Hearing the cries of the four friends, the family members of the complainant and the appellant as well as the neighbours came out of their house. The appellant threatened to kill the complainant and thereafter ran away from the place of the incident taking his knife with him. Mujib was taken in a rickshaw to a hospital run by Dr.Arjun Ghate. The Doctor advised them to take Mujib to the Government hospital immediately due to his deteriorating condition. Mujib was then shifted to K.E.M. hospital. The Doctors there treated the complainant and his other two friends Ravindra and Bajrang for the injuries sustained by them. Mujib succumbed to his injuries at

around 2 am on 10.7.1999 in the hospital. The complaint was then lodged with the Police. The appellant was arrested and he has been charged for committing the offences punishable under section 302 of the Indian Penal Code for having murdered Mujib and under section 324 for causing hurt to the complainant and two others.

3. The prosecution has examined 21 witnesses in order to prove the guilt of the appellant. PW1, PW2 and PW3 i.e., the complainant and his two friends are the persons who have sustained the injuries. PW4, PW5, PW6, PW7 and PW8 are the panch witnesses. PW9 claims to be an eye witness of the incident. PW10 and PW11 are the Doctors. PW12 is a witness who has turned hostile. PW13 is the witness who has drawn the plan of the scene of the offence. PW14 to PW21 are the police officials connected with this case. PW20 is the Investigating Officer.

4. The complainant i.e., PW1 has narrated the entire incident as it happened. He has spoken about the eve-teasing indulged in by the appellant qua his sisters. He has also deposed about him accosting the appellant alongwith his friends and questioning his indecent behaviour. He had then described as to how the victim Mujib was stabbed in the stomach and the ankle by the appellant. He has also described the injuries as suffered by himself and PW2 and PW3. He has candidly

admitted that his parents were on cordial terms with the appellant's parents and there was no enmity between the families. PW2 and PW3 corroborate the evidence of PW1. They have described the injuries suffered by PW1 and themselves as also the injury suffered by Mujib. PW9, the eye witness who has been examined by the prosecution has stated that he and his brother worked in an establishment owned by the father of PW1. He stayed on the worksite with his brother. He has stated that he and his brother heard the cries of the landlord's son, i.e., PW1 just a little past midnight. They rushed out of the room and found a boy of 16 or 17 years lying in front of the house of the accused. He has also witnessed the scuffle between the appellant on the one hand and PW1, PW2 and PW3 on the other. He has seen the appellant assaulting these three witnesses with a knife. He has also mentioned that the appellant ran away from the spot of the incident on seeing the neighbours gathering. This witness has also stated that about 2 or 3 months prior to the incident he had warned the appellant not to misbehave with Nandana who had complained to him about the appellant's behaviour. The defence in the cross-examination has tried to establish that this witness could not have been present at the spot when the incident occurred.

5. However, even without taking into consideration the deposition of this witness, we have no manner of

doubt that the testimonies of PW1, PW2 and PW3 are sufficient to establish the charge against the appellant.

6. PW10 is the Doctor who attended the injured and the deceased. He advised the complainant and the other injured persons to shift the victim to a government hospital. He has deposed that the victim was brought to the hospital with a history of assault near Radhakrishna Talkies. PW11 is the Doctor who conducted the postmortem examination on the victim Mujib. Both these Doctors have opined that the stab injuries sustained by the victim were sufficient to cause his death.

7. The panch witness PW4 has deposed in respect of the clothes of the appellant being attached on 10.7.1999. These clothes were blood stained. Similarly, he has deposed that on 13.7.1999, the knife was recovered at the instance of the appellant. The knife was found in the appellant's house on a wooden loft in the bathroom. This knife was blood stained and had a slightly twisted blade. The blood stains on the knife have been analysed and have been found to be human blood stains belonging to blood group 'O'. This was the blood group of the victim Mujib as seen from the Chemical Analyser's report. The blood group of the appellant is 'A'. Therefore, the prosecution has been able to link the weapon to the assault on Mujib. The

recovery having been made at the instance of the appellant, the culpability of the appellant in respect of the death of Mujib has been established by the prosecution.

8. As regards the assault on PW1, PW2 and PW3, they have vividly described the manner in which they were assaulted. The injuries sustained by them as indicated in the evidence of the medical officer PW10 corroborate their evidence. Therefore there is no need to doubt their testimony of having been assaulted by the appellants.

9. The learned Counsel appearing for the appellant has submitted that the prosecution has not been able to establish the case against the appellant. She submits that the place of the incident as deposed by PW10, the Doctor, is near Radhakrishna Talkies whereas the injured have mentioned that the incident occurred outside the house of the appellant. She then submitted that the knife and the clothes of the appellant have been recovered after three days and therefore, no reliance could be placed on this discovery made after so many days of the incident. She submits that it is the complainant and his friends who were the aggressors and the appellant had retaliated by exercising his right of private defence. She therefore, urges that the impugned judgment be set aside and the appellant be acquitted.

10. We have scrutinised the entire evidence on record and reappreciated the same. We are unable to accept the submissions of the learned Counsel for the appellant. PW1, PW2 and PW3 as well as PW9 have all spoken about the incident having occurred outside the house of the appellant. PW10 and PW11, the Doctors who attended the injured and the victim, have stated that the story given regarding the assault was that the incident occurred near Radhakrishna Talkies. In our opinion, nothing much turns on this piece of evidence. The Doctors have deposed that they were informed that the incident occurred at the aforesaid place. However, this does not mean that they had actually seen the incident occur at that place.

11. The submission of the learned Counsel that the recovery of knife should not be accepted since it was made after three days is also unsustainable. The knife has been recovered from the house of the appellant at his instance. Nobody could have had access to his house, least of all the witness for the prosecution, as suggested. Therefore, the recovery of the knife at the instance of the appellant though made after three days is a factor which links the appellant to the crime. The knife bore blood stains belonging to the 'O' group. This was the blood group of the deceased. Therefore, it is obvious that the knife had been used to kill the

deceased. The link between the appellant and the death of the deceased is thus established. The clothes which were recovered also were blood stained and bore human blood. The blood stains found on the clothes of PW2 are of 'B' group indicating that he had sustained an injury which in any case has been corroborated by the medical evidence on record.

12. The submission of the learned Counsel for the appellant that it was the prosecution witnesses who were the aggressors and that the appellant had exercised his right to private defence cannot be accepted. It was the indecent and scandalous behaviour of the appellant which led to the complainant PW1 and his friends accosting the appellant. The appellant had time and again been warned by several people, including the complainant, as well as PW9 that he should not misbehave with the sisters of the complainant. The appellant chose to ignore these warnings and continued with his indecent behaviour towards these teenaged girls. It is therefore, quite evident that the appellant was irked by the complainant and his friends for having questioned his behaviour. He had therefore, assaulted the deceased as well as the injured. The motive is thus also established against the appellant. The question of him having exercised his right of private defence does not arise at all as neither the prosecution witnesses 1, 2 and 3 nor the deceased had threatened him in any manner.

13. We have considered the impugned judgment and we find that the trial Court has arrived at proper conclusions. We have, after reappreciating the evidence on record, arrived at the same conclusions. The impugned judgment is therefore, confirmed. Appeal dismissed.

14. The fees of the advocates appearing for both the appellant and the State are quantified at Rs.2,000/- each.